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5 **UNITED STATES DISTRICT COURT**
6 **DISTRICT OF NEVADA**

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8 MALCOLM BROOKS,

9 Plaintiff,

10 vs.

11 STATE OF NEVADA,

12 Defendant.

Case No. 2:21-cv-01313-GMN-VCF

Report and Recommendation for Dismissal

Amended Complaint (ECF No. 5)

13 Pro se plaintiff Malcolm Brooks filed an amended complaint (ECF No. 8). I recommend that
14 plaintiff's amended complaint be dismissed.

15 **DISCUSSION**

16 I previously dismissed plaintiff's complaint without prejudice because he failed to state a claim.
17 ECF No. 3. Brooks brought claims against Trevor Berghuis and Elvin Valle pursuant to the Fourth,
18 Fifth, Sixth, and Ninth Amendments of the US Constitution pursuant to 42 USC 1983. *Id.* Brooks
19 alleged that Berghuis and Valle are "agents of the State of Nevada and the City of Las Vegas" and that
20 on February 17, 2021, they attempted to take his property (a Cadillac), trespassed on his property, and
21 arrested him without a warrant. *Id.* I dismissed his complaint without prejudice. *Id.* I found that he did
22 not state any plausible Section 1983 claims, that his complaint had issues per the *Younger* doctrine, and
23 he did not give fair notice per Rule 8. *Id.* I also cautioned the plaintiff that his repeated duplicative
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1 filings in this Court (which I outlined in my order) were bordering on vexatious. *Id.* at 3, n. 1. I gave
2 plaintiff leave to amend.

3 Plaintiff's amended complaint is identical to his original complaint. Compare ECF Nos. 1-1 and
4 5. Since the plaintiff did not take any steps to amend the content of his complaint per my previous
5 screening order, I recommend that this case be dismissed for all the reasons stated in my original
6 screening order. ECF No. 3. I also note that plaintiff's duplicate filing of the same complaint further
7 shows that he is taking steps to file duplicative pleadings and actions in this Court. I warn plaintiff that
8 he may be sanctioned and deemed a vexatious litigant if he continues to file duplicative pleadings and
9 actions here.

10 ACCORDINGLY,

11 IT IS RECOMMENDED that that this action be DISMISSED and Judgment entered,
12 accordingly.

13 I CAUTION plaintiff that continuing to file duplicative and/or frivolous lawsuits may result in
14 adverse consequences, including possible sanctions or a finding that he is a vexatious litigant.

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16 **NOTICE**

17 Pursuant to Local Rules IB 3-1 and IB 3-2, a party may object to orders and reports and
18 recommendations issued by the magistrate judge. Objections must be in writing and filed with the Clerk
19 of the Court within fourteen days. LR IB 3-1, 3-2. The Supreme Court has held that the courts of appeal
20 may determine that an appeal has been waived due to the failure to file objections within the specified
21 time. *Thomas v. Arn*, 474 U.S. 140, 142 (1985). This circuit has also held that (1) failure to file
22 objections within the specified time and (2) failure to properly address and brief the objectionable issues
23 waives the right to appeal the District Court's order and/or appeal factual issues from the order of the
24 District Court. *Martinez v. Ylst*, 951 F.2d 1153, 1157 (9th Cir. 1991); *Britt v. Simi Valley United Sch.*
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1 *Dist.*, 708 F.2d 452, 454 (9th Cir. 1983). Pursuant to LR IA 3-1, the plaintiff must immediately file
2 written notification with the court of any change of address. The notification must include proof of
3 service upon each opposing party's attorney, or upon the opposing party if the party is unrepresented by
4 counsel. Failure to comply with this rule may result in dismissal of the action.

5 IT IS SO RECOMMENDED.

6 DATED this 2nd day of March 2022.

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8 CAM FERENBACH
9 UNITED STATES MAGISTRATE JUDGE
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